No. 90-1390

SUPREME COURT
OF THE UNITED STATES
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GENERAL MOTORS CORPORATION,

Petitioner,

v

EVERT ROMEIN and MICHIGAN ATTORNEY GENERAL FRANK J. KELLEY,

Respondents.

FORD MOTOR COMPANY,

Petitioner,

v

ARTURO GONZALEZ and MICHIGAN ATTORNEY GENERAL FRANK J. KELLEY,

Respondents.

On Writ of Certiorari
to the Supreme Court of Michigan

BRIEF FOR RESPONDENT MICHIGAN ATTORNEY GENERAL

FRANK J. KELLEY
Attorney General

GAY SECOR HARDY
Solicitor General

THOMAS L. CASEY
Assistant Solicitor General
Counsel of Record
Appellate Division
P. O. Box 30212
Lansing, Michigan 48909
(517) 373-1124

BEST AVAILABLE COPY

QUESTIONS PRESENTED

I

WHETHER A 1987 MICHIGAN STATUTE RETROACTIVELY PROHIBITING A REDUCTION IN THE LEVEL OF WORKERS' COMPENSATION BENEFITS AND REQUIRING EMPLOYERS TO REFUND BENEFITS WHICH HAD BEEN IMPROPERLY REDUCED VIOLATES THE IMPAIRMENT OF CONTRACTS CLAUSE (Art I, § 10) OF THE UNITED STATES CONSTITUTION?

II

WHETHER A 1987 MICHIGAN STATUTE RETROACTIVELY PROHIBITING A REDUCTION IN THE LEVEL OF WORKERS' COMPENSATION BENEFITS AND REQUIRING EMPLOYERS TO REFUND BENEFITS WHICH HAD BEEN IMPROPERLY REDUCED VIOLATES THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION?

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STATEMENT OF THE CASE

Respondent Michigan Attorney General agrees with and adopts the "Counterstatement of the Case" contained in the Brief for Respondents Romein and Gonzalez, but wishes to emphasize the following points:

1. As originally enacted in 1912 (1912 PA 10), Michigan's workers' compensation system was voluntary. Employers had the option to elect coverage under the Act, and employees had the option to decline coverage. In 1943 (1943 PA 245) the Act was amended to make workers' compensation compulsory for virtually all employers. As explained in Argument I in this brief, this change from a voluntary to a mandatory system had fundamental implications for Contracts Clause analysis.

2. For an employee who receives a personal injury "arising out of and in

the course of employment", the statutory right to recovery of workers' compensation benefits "shall be the employee's exclusive remedy against the employer." MCL 418.301(1); MSA 17.237(301)(1), MCL 418.131; MSA 17.237(13). As described in Lahti v Fosterling, 357 Mich 578, 585 (1959):

> The act was originally adopted to give employers protection against common-law actions and to place upon industry, where it properly belongs, not only the expense of the hospital and medical bills of the injured employee, but place upon it the burden of making a reasonable contribution to the sustenance of that employee and his dependents during the period of time he is incapacitated from work.

The primary purpose of Michigan's workers' compensation system is to provide, through a highly regulated statutory system of weekly benefit payments,

income protection for injured workers during the time of loss of wage earning capacity. The Michigan Supreme Court described the public policy underlying this system in Franks v White Pine Copper Div, 422 Mich 636, 654 (1985):

> Workers' compensation benefits are social-welfare income-maintenance benefits. Workers' compensation is the first or progenitor safety net providing a means of income maintenance for persons who have met misfortune or whose regular income source has been cut off. All the social welfare programs--workers' compensation, unemployment compensation, social security old age, disability, and survivors benefits, no-fault automobile benefits, aid to families with dependent children, and general assistance--are directed to the same objective, income maintenance. All these programs are funded by impositions on employers and others of mandatory payments (to the government, insurers or, in the case of the self-insured, to the beneficiary), with statutorily prescribed benefits. In providing for such benefits, the Legislature did not covenant not to amend the legislation.

3. In a statute enacted in 1980 (1980 PA 357) and a package of twelve statutes enacted in 1981 (1981 PA 192-203) the Michigan Legislature engaged in a "comprehensive reform" of the workers' compensation system to correct perceived defects. Franks, 422 Mich at 649-650. The instant litigation involves a challenge to one aspect of this reform, the coordination of benefits provisions, which permit employers to reduce workers' compensation benefits by an amount based upon other employer-financed income replacement benefits such as social security benefits and pensions. MCL 418.354; MSA 17.237(354). The concerns underlying the coordination of benefits provisions were described in a report prepared for the Michigan Senate as part of the legislative history of the statute, as an

effort to "... reduce the overlap between the various public and private wage replacement programs while ensuring adequate wage-loss benefits to injured employees." (quoted in Franks, 422 Mich at 656).

Despite Petitioners' pejorative characterization of the prior system (alleging that injured employees such as Respondents Romein and Gonzalez were "the least deserving subset of employees" who had been able to "double dip", Petitioners' Brief, p 26), it is readily apparent that the debate surrounding the coordination provisions merely reflected the latest in a continuing series of policy choices made by the Michigan Legislature in the evolutionary process of shaping Michigan's workers' compensa-

tion system. The Michigan Supreme Court in the instant case recognized that adoption of the coordination of benefits provisions was the result of a policy decision by the Legislature as part of a broad compromise among various interests, Romein v General Motors Corp, 436 Mich 515, 521 (1990):

> This statute was part of a legislative reform package involving a series of related amendments of the workers' compensation statute. The coordination provisions were an essential component of a compromise plan that restructured benefits payable to disabled workers. The resources saved as a result of this coordination were reallocated by the statute to increase benefit levels generally, from two-thirds of the average weekly wage to 80 percent of after-tax wages, effective for injuries occurring after January 1, 1982.

Similarly, the court had previously noted that as part of the legislative effort to balance the interests of employers and

employees the 1980 statute (1980 PA 357, § 352; MCL 418.352; MSA 17.237(352)) provided state-funded supplements for workers injured in the years between 1965 and 1979. The court observed that the reform package "may not have resulted in perfect equity for everyone", but nevertheless it represented "a reasoned legislative attempt to reconcile fairly the various interests of workers injured at different dates with the economic needs of this state." Franks, 422 Mich at 660, fn. 19.

4. After enactment of the 1981 package of reform statutes, a few employers--notably Petitioners General Motors and Ford--applied the coordination provisions to workers injured prior to 1982 as well as to workers injured after 1982. Petitioners did so at their peril, knowing

full well that such action was hotly contested. The statute was silent on the question of retroactive application, and Petitioners themselves only adopted their current interpretation as a litigation tactic after the statute became effective (the statute was effective on March 31, 1982, yet Petitioner General Motors did not attempt to apply it to Respondent Romein until September 28, 1983, Romein, 436 Mich at 521). Petitioners' interpretation of retroactive application was disputed by a resolution of both houses of the Michigan Legislature in 1982 (Senate Concurrent Resolution No. 575, discussed at Franks, 422 Mich at 659) and was consistently rejected in administrative hearings and by the Michigan courts until the Michigan Supreme Court's decision in Franks became final after rehear-

ing was denied on December 30, 1985. Franks, 422 Mich 636 (1985), reh den 424 Mich 1202 (1985).

5. Throughout their brief (see e.g., Petitioners' Brief, pp 2-5) Petitioners rely upon statements contained in the dissenting opinion filed by Michigan Supreme Court Chief Justice Riley in the instant case, Romein, 436 Mich at 547-564, in arguing for the existence of an "economic crisis." Such reliance, however, is both misplaced and irrelevant. Initially it must be observed that Chief Justice Riley dissented from the majority opinion solely on state law grounds, not upon the federal constitutional positions which Petitioners assert in this Court.

To the extent that Petitioners General Motors and Ford imply that their

voices were not heard by the Michigan Legislature in 1987 their argument is simply not credible. Changes in Michigan's economic conditions between 1981 and 1987, and changes in the membership of the Michigan Legislature between 1981 and 1987, are simply irrelevant to the constitutional questions which are at issue in this litigation. Either 1987 PA 28 violates the Contracts Clause or the Due Process Clause, or it does not; that outcome does not depend upon the economic backdrop or the identity of the legislators who voted for the statute.

SUMMARY OF ARGUMENT

In 1980 and 1981 the Michigan Legislature enacted thirteen bills in a comprehensive revision of the Michigan workers' compensation system to correct

perceived defects. This package of bills was the result of extensive negotiations and compromises between many competing interests and represented merely the latest in a continuing series of policy choices made by the Michigan Legislature in the evolutionary process of shaping Michigan's workers' compensation system. One of the statutes enacted in this revision package permitted employers to reduce workers' compensation benefits for workers who were receiving benefits from other employer-financed income replacement programs such as pensions.

In a surprising and unexpected decision in 1985, the Michigan Supreme Court held that these "coordination" provisions would be applied not only to claims based upon injuries occurring after the effec-

tive date of the statute, but also to the benefits of workers who had been injured earlier and who were receiving benefits on the date the statute became effective. In 1987 the Michigan Legislature passed a statute to correct the effects of the judicial decision by prohibiting employers from reducing workers' compensation benefit levels for employees who had been receiving benefits on the effective date of the 1981 statute, and ordering employers who had made such reductions to refund, with interest, any amounts which had been improperly reduced.

The history of the evolution of Michigan's workers' compensation statutes, and their judicial interpretation by the Michigan courts, make it clear that workers' compensation benefit levels

are not legitimate contractual expectations protected by the Contracts Clause of the United States Constitution. Under Michigan law, such benefit levels are exclusively controlled by statute and may be modified by the Legislature, despite the expectations of employers and employees. In making its independent determination of whether the Michigan statutes are subject to the Contracts Clause this Court should defer to the determinations of this question by the Michigan courts.

Even if the Contracts Clause does apply to these statutes, however, they do not unconstitutionally impair the obligation of contracts. The Court's Contracts Clause jurisprudence properly accommodates the legitimate exercise of the sov-

ereign right of the State to protect the lives, health, morals, comfort and general welfare of its people. The workers' compensation reform statute at issue in this case does not substantially impair any contractual relationship of Petitioners, it promotes the legitimate public purpose of protecting the right of disabled employees to receive the full compensation intended by the Legislature, and it achieves that result through reasonable means.

The retroactive portions of the Michigan statutes do not violate due process rights since they are justified by the rational legislative purpose to protect the benefit levels of disabled workers who did not receive other increases in benefit levels in the legislative reform packages of 1980 and 1981.

ARGUMENT

I

THE CONTRACTS CLAUSE DOES NOT APPLY TO THE MICHIGAN STATUTE GOVERNING WORKERS' COMPENSATION BENEFIT LEVELS.

Applicability Of The Contracts Clause Is A Federal Question, But The Court Should Give Considerable Deference To State Law.

It is undisputed that when a state statute is challenged upon the ground that it impairs the obligation of a contract, this Court has the ultimate authority to determine the existence of the contract and the nature and extent of its obligation. Irving Trust Co v Day, 314 US 556, 561 (1942); Hale v Iowa State Board of Assessment and Review, 302 US 95, 101 (1937): "The power is ours, when the impairment of an obligation is urged against a law, to determine for ourselves the effect and meaning of the contract as well as its existence."

It is also beyond dispute, however (although Petitioners do not appear to recognize it), that in making its determination this Court gives great weight to the determinations made by state courts. Hale, 302 US at 101 ("Even so, we lean toward agreement with the courts of the state, and accept their judgment as to such matters unless manifestly wrong."); Phelps v Board of Education, 300 US 319, 322-323 (1937):

> This Court is not bound by the decision of a state court as to the existence and terms of a contract, the obligation of which is asserted to be impaired, but where a statute is claimed to create a contractual right we give weight to the construction of the statute by the courts of the state. *** Unless those views are palpably erroneous we should accept them.

In Petitioners' Brief, pp 10-11, n. 3, Petitioners cite Indiana, ex rel

Anderson v Brand, 303 US 95, 100 (1938), and Appleby v City of New York, 271 US 364, 379-380 (1926), for the principle that this Court has the ultimate authority to decide the question. By selectively quoting only portions of sentences, however, Petitioners carefully avoid mention of the principle that this Court gives considerable deference to state court determinations, although both of those cases support this principle, as shown by the following quotations in their proper context:

> On such a question, one primarily of state law, we accord respectful consideration and great weight to the views of the State's highest court but, in order that the constitutional mandate may not become a dead letter, we are bound to decide for ourselves whether a contract was made, what are its terms and conditions, and whether the State has, by later legislation, impaired its obligation.
> Indiana, ex rel Anderson, 303 US at 100 (footnote omitted).

These questions we must answer independently of the conclusion of that [State] court. Of course we should give all proper weight to its judgment, but we can not perform our duty to enforce the guaranty of the Federal Constitution as to the inviolability of contracts by state legislative action unless we give the questions independent consideration. Appleby, 271 US at 379-380.

Michigan's Statutory Workers' Compensation Benefits Are Not Subject To The Contracts Clause.

As Petitio[illegible] recognized in their Petition (Petit[illegible] pp 11-14), there is variation among the states concerning whether state workers' compensation statutes are subject to the Contracts Clause. Because the ultimate determination of whether the Contracts Clause applies lies with this Court, and because such systems will undoubtedly be subject to a Due Process analysis, such statutes will not evade constitutional review. Respondent

Attorney General submits that workers' compensation is not an area in which nationwide uniformity regarding the applicability of the Contracts Clause is necessary.

In the instant case the Michigan Supreme Court held that Petitioners' expectations regarding the level of workers' compensation benefits are not contractual expectations protected by the Contracts Clause. Romein, 436 Mich at 533-534. Respondent Attorney General submits that this Court should defer to this determination, particularly since it is consistent with the history of the development of Michigan's workers' compensation system and is consistent with numerous prior decisions by the Michigan Supreme Court.

Coverage under a workers' compensation system is conditioned on the employment relationship which is contractual in nature, but the mere existence of a contract does not necessarily implicate the Contracts Clause. As Justice Holmes said in Hudson Co v McCarter, 209 US 349, 357 (1908): "One whose rights, such as they are, are subject to state restriction, can not remove them from the power of the State by making a contract about them. The contract will carry with it the infirmity of the subject matter."

In Michigan, the first workers' compensation system enacted in 1912 was voluntary and contractual. The contractual nature of Michigan's elective workers' compensation system under the 1912 statute is exemplified by the deci-

sion in Thomas v Parker Rust Proof Co, 284 Mich 260 (1938), cited in Petitioners' Brief at p 14, n. 5. In Thomas the employer had elected to operate under the provisions of the act and the employee had not exercised his right of rejection so the court held: "The provisions of the workmen's compensation act are, in effect, read into the contract of employment between the employer and the employee" and "both are bound by the provisions of the act". 284 Mich at 266. The act did not then provide for damages for injury caused by an occupational disease and because the common law had not recognized such a cause of action, the court held that the act did not take away a right of action and there was no impairment of the obligations of the contract of employment. 284 Mich at 267,

269. Even under this voluntary system, however, once an employer and employee had agreed to be covered by the act, they were not free to modify the compensation provided by the act, Harrington v Department of Labor & Industry, 252 Mich 87, 89 (1930):

> Compensation is not a private matter between employer and employee. The public is interested. The act declares a State policy that the burden of industrial accidental personal injuries shall be borne by the industries, not by the general public. To effectuate this policy, the act provides for frequent regular payments, weekly, not monthly, or quarterly, or annually. It opposes payments in gross or in lump sum, except in certain "special circumstances." Subject to its limitations, it contemplates weekly payments of compensation during disability, no more, no less.
>
> In short, an agreement respecting compensation, to merit approval, must follow and conform to the provisions of the act.

This language in Harrington was cited in Henry v Ford Motor Co, 291 Mich 535,

540 (1939), in which the court held that an employee who had received unemployment compensation benefits after being laid off was also entitled to workers' compensation benefits as a result of a work-related injury. 291 Mich at 541:

> Both awards are purely statutory and while there is no question about some incongruity in the provisions, nevertheless we are bound by the wording of the statutes. The remedy is with the legislature who alone can provide for deductions or denial of compensation under one act or the other. (emphasis added).

Despite the recognition that there was an overriding public interest in the subject area of workers' compensation and despite the recognition that the terms of the statute were controlling, Michigan courts also recognized that, at least to some extent, workers' compensation under the then elective statute retained some

aspects of contractual rights. For example, in Tarnow v Railway Express Agency, 331 Mich 558 (1951), the court held that an employee who had been injured in 1938, when the elective act was in place, was entitled to certain additional compensation benefits after the 1943 amendments, despite the fact that the terms of the 1943 statute would have precluded such benefits. The court said that the right to such further compensation was a contractual right which accrued to him when the accident happened and that the provision of the Workmen's Compensation Act then in effect were a part of the contract of hire. 331 Mich at 562. The Tarnow court distinguished Allen v Kalamazoo Paraffine Co, 312 Mich 575 (1945), in which the plaintiff was injured on the job in 1943 while a stat-

ute was in effect which specified compensation of $18.00 per week for 100 weeks, but the parties had stipulated that the plaintiff lost the industrial use of the eye in September, 1944, at which time the statute provided compensation of $21.00 per week for 150 weeks. The court relied upon the unique facts of the case in holding that the operative date was when the loss of industrial use occurred and not the date of injury. In doing so, the Court rejected the employer's contention that the contractual employment relationship governed the substantive rights and obligations of the parties, 312 Mich at 576-577:

> Defendants offered to pay compensation for the lesser amount and urge on appeal that the right to compensation arises from the contractual relation between the employer and employee; and that the compensation act in force at the time the contractual relations were entered into gov-

erns the substantive rights and obligations of the parties.

> We are not in accord with this theory. Defendant company elected to accept the benefit of the act providing for workmen's compensation as well as such amendments to the act as the legislature might deem proper to make.

After the 1943 amendments made the workers' compensation system compulsory, the reliance upon contractual principles soon diminished. For example, in Crilly v Ballou, 353 Mich 303, 307-308 (1958), the court quoted from Cudahy Packing Co of Nebraska v Parramore, 263 US 418, 423 (1923), and said:

> Workmen's compensation legislation rests upon the idea of status, not upon that of implied contract; that is upon the conception that the injured workman is entitled to compensation for an injury sustained in the service of an industry to whose operations he contributes his work as the owner contributes his capital--the one for the sake of the wages and the other for the sake of the profits.

In Lahti v Fosterling, 357 Mich 578 (1959), the question was whether a 1955 amendment to the Act applied to a claim arising before the amendment went into effect. The amendment, if applicable, would have extended benefits beyond the period permitted under the terms of the statute in effect at the time of the injury. The employer cited Tarnow, supra, and other cases, arguing that the law in effect at the date of injury was absolutely controlling. The court used strong language in rejecting such an analysis, 357 Mich at 584-586:

> All of these cases are decided upon the theory that rights vested at the time of injury, and since the workmen's compensation act is statutory, and since the employment is based upon a contract, for the legislature to change the remedies would be a violation of the rights of the parties and the contract.
>
> In dealing with the workmen's compensation act it is necessary occa-

sionally to bring ourselves back to the original aims and purposes of the act in order to better understand the rights of the parties involved. Naturally, in the construction of the act over a great many years, some unfortunate language has crept into opinions, which, by process of repetition, has become looked upon as the proper construction of the act.

The act was originally adopted to give employers protection against common-law actions and to place upon industry, where it properly belongs, not only the expense of the hospital and medical bills of the injured employee, but place upon it the burden of making a reasonable contribution to the sustenance of that employee and his dependents during the period of time he is incapacitated from work. This was the express intent of the legislature in adopting this law.

* * *

During the years, with the development of industry and the employment of larger and larger numbers of employees in the business world, the legislature has progressively, even if slowly, kept the act up-to-date by meeting the changing conditions and requiring industry to assume its share of the new responsibilities. The employers who were happy to be relieved of the old liabilities have sought by legalistic approach of narrow and limited construction of

the act to defeat its humanitarian purposes.

The court rejected the employer's contention that they had a vested right to enforcement of the terms of the statute as it had existed prior to its amendment, 357 Mich at 588-589:

> The question of determining what is a vested right has always been a source of much difficulty to all courts. The right which defendants claim sprang from the kindness and grace of the legislature. It is the general rule that that which the legislature gives, it may take away. A statutory defense, or a statutory right, though a valuable right, is not a vested right, and the holder thereof may be deprived of it.

In discussing a possible Contracts Clause challenge, Lahti quoted from Allen, supra, 312 Mich at 576-577, where the court rejected an employer's arguments based on a contract theory. 357

Mich at 593-594. The Lahti court also cited with approval (357 Mich at 592) and quoted from a New York case which upheld retroactive application of a workers' compensation act amendment despite a claim that it violated the Contracts Clause, Matter of Schmidt v Wolf Contracting Co, 269 App Div 201, 207; 55 NYS2d 162 (1945).

Although the opinion quoted, inter alia, from a West Virginia case which observed that employers' liability under workers' compensation statutes have some contractual basis, 357 Mich at 594, it is clear that the court rejected the employer's contention that the contract of employment conferred vested rights which could not thereafter be modified by statutory changes, 357 Mich at 595: "...

no vested or contractual right exists that prohibits the legislature from making a change in the remedy afforded employees ... ."

In Selk v Detroit Plastic Products, 419 Mich 1 (1984), on resubmission, 419 Mich 32 (1984), the court upheld, against a Contracts Clause challenge, a statutory amendment which increased the interest on workers' compensation awards made after January 1, 1982, and applied the amendment with respect to payments which became due prior to January 1, 1982. The court said that the higher interest rate may be awarded from the date payment was due even if that was prior to the effective date of the amendment, "without running afoul" of the Contracts Clause. 419 Mich at 11. The court first rejected the

theory that since the employment is based upon a contract, for the Legislature to change the remedies would be a violation of the contract, 419 Mich at 11:

> While this Court has characterized workers' compensation as a liability arising out of the contract of employment, we have nonetheless consistently emphasized that workers' compensation is a matter of statutory grace. (citations omitted, emphasis added).

The court then went on to quote from Lahti, supra, 357 Mich at 494-495, and other cases and concluded that despite the contractual nature of the relationship, the interest rate on a compensation award related only to an additional remedy for the enforcement of a contract. It did not alter the substance of the relationship, and therefore it could be modified without violating the impairment of contract clauses. 419 Mich at 12.

After making this ruling, however, the court went on to engage in the balancing test enunciated in Allied Structural Steel Co v Spannaus, 438 US 234 (1978), and Energy Reserves Group, Inc v Kansas Power & Light Co, 459 US 400 (1983), in order to evaluate whether there was a "substantial alteration" of the terms of the contract and if so, whether the legislation is necessary to meet a "broad and pressing social need" and is "reasonably related" to that goal. 419 Mich at 13-14.

Petitioners quote a selected phrase from Selk, 419 Mich at 11 (Petitioners' Brief, p 14) and argue that under Michigan law the basis for employers' liability is contractual. While it is true that some cases like Lahti and Selk

contain reference to a contractual relationship arising out of the employment, the holdings of such cases explicitly recognize the pre-eminence of the Legislature's right to modify the statutes. To the extent that isolated language in Lahti and Selk demonstrated any confusion or overlap between the separate questions of whether the Contracts Clause applies to workers' compensation statutes, and whether such statutes violate the Clause, the confusion was dispelled in Franks v White Pine Copper Div, 422 Mich 636, 654 (1985). There, the court held that Michigan workers' compensation benefits "are social-welfare income-maintenance benefits" like unemployment compensation, social security old age, disability, and survivor's benefits, no-fault automobile benefits, aid to families with dependent

children, and general assistance. The court observed that all of these programs "are funded by impositions on employers and others of mandatory payments ... with statutorily prescribed benefits" and that in providing for such benefits, the Michigan Legislature "did not covenant not to amend the legislation." The court then unambiguously stated that Michigan workers' compensation benefits are not protected by the Contracts Clause, 422 Mich at 654:

> Income-maintenance benefits payable under a legislatively mandated social welfare program are not property protected by the Due Process Clause, the Contracts Clause, or the Takings Clause from substantive change by subsequent legislation irrespective of whether the recipient contributed to the cost of funding the benefit or of whether the program replaces a tort remedy which has been abolished. (footnotes omitted).

Finally, in the instant case, the Michigan Supreme Court again unequivo-

cally held that the level of workers' compensation benefits existing at the time of an injury is not a legitimate contractual expectation protected by the Contracts Clause. Romein, supra, 436 Mich at 533-534.

In summary, while there may occasionally have been some ambiguity or lack of analytical precision, one consistent principle can be identified in the Michigan cases: despite the fact of a contractual employment relationship, workers' compensation benefits are statutory in nature and do not involve contractual expectations protected by the Contracts Clause. The contract of employment is a necessary prerequisite since it establishes the existence of the relationship, but once that relationship is

established, the contractual aspects are eclipsed by the absolute statutory control over the rights of the parties.

II

THE MICHIGAN WORKERS' COMPENSATION STATUTE DOES NOT VIOLATE THE CONTRACTS CLAUSE.

Petitioners' Criticism Of Current Contracts Clause Jurisprudence Is Unwarranted.

Petitioners argue that Contracts Clause jurisprudence "in recent years" has "strayed from the original understanding of the clause" and they make an argument for "returning to the original understanding". Petitioners' Brief, pp 28-36. As justification for this approach, they assert that the language of the clause is "straightforward" and, relying on a begrudging interpretation of Home Building & Loan Ass'n v Blaisdell,

290 US 398 (1934), they assert that the Court's "current approach" is "out of harmony with the constitutional text, structure, history and purpose" of the clause. Petitioners' Brief, pp 30, 29. Respondent Attorney General submits that Petitioners' argument is misguided and fails to give sufficient consideration--indeed, fails to give any consideration--to the most fundamental principle which underlies Blaisdell: the recognition that "the reservation of essential attributes of sovereign power is also read into contracts as a postulate of the legal order." Blaisdell, 290 US at 435.

In Blaisdell this Court upheld a Minnesota statute which permitted courts to postpone mortgage foreclosure sales of homes and to extend the period of redemption. Perhaps in an effort to avoid having to urge that Blaisdell be overruled, Petitioners have incorrectly characterized Blaisdell as "a narrow decision" based upon the temporary and emergency nature of the statutory provision at issue. While it is true that the case involved an emergency statute, Respondent Attorney General submits that the principles which were enforced in Blaisdell are more fundamental than Petitioners' arguments suggest. Petitioners' unduly narrow characterization of Blaisdell is best exemplified on page 29 of their brief when they assert that the decision rested on "the relation of emergency to constitutional power." That quotation improperly focuses on just one phrase taken out of context, but when one views this Court's statement in its entirety, it is

clear that the Court was engaging in a balancing of interests which included a consideration of "the power of the State" to enact necessary legislation, Blaisdell, 290 US at 425:

> In determining whether the provision for this temporary and conditional relief exceeds the power of the State by reason of the clause in the Federal Constitution prohibiting impairment of the obligations of contracts, we must consider the relation of emergency to constitutional power, the historical setting of the contract clause, the development of the jurisprudence of this Court in the construction of that clause, and the principles of construction which we may consider to be established.

The remainder of the Blaisdell opinion clearly indicates that it was not a sudden break from the past. To the contrary, the Court engaged in an extended discussion of the history of judicial interpretation of the Clause,

290 US at 428: "To ascertain the scope of the constitutional provision we examine the course of judicial decisions in its application. These put it beyond question that the prohibition is not an absolute one and is not to be read with literal exactness like a mathematical formula." The Court cited numerous prior decisions establishing that the State retains control over remedial processes and went on to say, 290 US at 434-435:

> ... but the State also continues to possess authority to safeguard the vital interests of its people. It does not matter that legislation appropriate to that end "has the result of modifying or abrogating contracts already in effect."

Petitioners cite W.B. Worthen Co v Thomas, 292 US 426 (1934), which struck down a state statute which would have precluded collection of a previously-

adjudicated debt, and attempt to characterize it as demonstrating the narrowness of the Blaisdell decision. To the contrary, however, the Court in Thomas wholeheartedly accepted Blaisdell's recognition that the principle of state sovereignty can operate as a limitation against a literal interpretation of the language of the Contracts Clause, Thomas, 292 US at 432-433:

> We held in [Blaisdell] that the constitutional prohibition against the impairment of the obligation of contracts did not make it impossible for the State, in the exercise of its essential reserved power, to protect the vital interests of its people. The exercise of that reserved power has repeatedly been sustained by this Court as against a literalism in the construction of the contract clause which would make it destructive of the public interest by depriving the State of its prerogative of self-protection. We held that this reserved protective power extended not only to legislation to safeguard the public health, public safety, and public morals, and to prevent injurious practices in business subject to

> legislative regulation, despite interference with existing contracts, -- an exercise of the State's necessary authority which has had frequent illustration -- but also to those extraordinary conditions in which a public disaster calls for temporary relief.

Petitioners make only a half-hearted argument that the language of the Contracts Clause should be applied literally. Indeed, they recognize that the Clause "is subject to judicial interpretation", that "not every legislative modification of workers' compensation benefit levels is an unconstitutional impairment of contract" and that "there is an unquestioned need for the states, in the exercise of their legitimate police power, to be able to regulate future conduct even if that may interfere with some contractual expectations." Petitioners' Brief, pp 30, 15, 36. By

thus recognizing that the literal language of the Clause is subject to some state limitations, Petitioners' argument regarding "original understanding" is shown to be merely dissatisfaction with the way this Court has interpreted it, not with the fact that it is subject to interpretation.

Respondent Attorney General submits that Petitioners' proposed interpretation of the Contracts Clause does not give sufficient recognition to the principle of state sovereignty and to the necessity that the strict terms of the Contracts Clause must be accommodated to the legitimate exercise of the state's police power. Respondent Attorney General submits that current Contracts Clause jurisprudence is faithful to the true meaning

of the Clause, when it is interpreted within the context of other necessary constitutional principles, including the fundamental principle of state sovereignty. There is no reason for this Court to abandon its Contracts Clause jurisprudence, as currently exemplified in cases such as Energy Reserves Group, Inc v Kansas Power & Light Co, 459 US 400 (1983).

The 1987 Amendments To Michigan's Workers' Compensation Law Were Legitimate Exercises Of The State's Police Power And Do Not Violate The Contracts Clause.

It has long been recognized that the restraints of the Contracts Clause must be accommodated to the inherent police power of the state.

> It is the settled law of this court that the interdiction of statutes impairing the obligation of contracts does not prevent the State from exer-

cising such powers as are vested in it for the promotion of the common weal, or are necessary for the general good of the public, though contracts previously entered into between individuals may thereby be affected. This power, which in its various ramifications is known as the police power, is an exercise of the sovereign right of the Government to protect the lives, health, morals, comfort and general welfare of the people, and is paramount to any rights under contracts between individuals.
Manigault v Springs, 199 US 473, 480 (1905), as quoted in Allied Structural Steel Co v Spannaus, 438 US 234, 241 (1978).

Many decisions of this Court describe the appropriate analysis to be employed in evaluating Contracts Clause claims, including Energy Reserves Group, Inc v Kansas Power & Light Co, 459 US 400, 411-413 (1983):

> The threshold inquiry is "whether the state law has, in fact, operated as a substantial impairment of a contractual relationship." *** The severity of the impairment is said to increase the level of scrutiny to which the legislation will be sub-

> jected. *** Total destruction of contractual expectations is not necessary for a finding of substantial impairment. *** On the other hand, state regulation that restricts a party to gains it reasonably expected from the contract does not necessarily constitute a substantial impairment. *** In determining the extent of the impairment, we are to consider whether the industry the complaining party has entered has been regulated in the past. ***
>
> If the state regulation constitutes a substantial impairment, the State, in justification, must have a significant and legitimate public purpose behind the regulation, ... such as the remedying of a broad and general social or economic problem. *** Furthermore, since Blaisdell, the Court has indicated that the public purpose need not be addressed to an emergency or temporary situation. *** One legitimate state interest is the elimination of unforeseen windfall profits. *** The requirement of a legitimate public purpose guarantees that the State is exercising its police power, rather than providing a benefit to special interests.
>
> Once a legitimate public purpose has been identified the next inquiry is whether the adjustment of "the rights and responsibilities of contracting parties [is based] upon reasonable conditions and [is] of a character appropriate to the public purpose justifying [the legisla-

> tion's] adoption." *** Unless the state itself is a contracting party, ... "[a]s is customary in reviewing economic and social regulation, ... courts properly defer to legislative judgment as to the necessity and reasonableness of a particular measure."
> (citations and footnotes omitted).

Respondent Michigan Attorney General submits that the Michigan Supreme Court properly applied this analysis in concluding that Petitioners' constitutional rights were not violated by the 1987 amendments to Michigan's Workers' Compensation Law.

1. There Has Been No Substantial Impairment Of A Contractual Relationship.

Initially, it is important to recall that the only effect of the 1987 statutory amendments was to restore injured workers to the benefit levels they had

been receiving prior to the 1981 statutes. The 1985 Michigan Supreme Court decision in Franks had interpreted the 1981 statutes to permit Petitioners to reduce the workers' compensation benefit levels, and the 1987 statutory amendments simply returned the parties to the status quo which had originally existed. Therefore, in this sense, the 1987 statutes simply "restricts a party to gains it reasonably expected from the contract". Energy Reserves, 459 US at 411.

The Michigan Supreme Court correctly observed that the statutes which are at issue simply involve benefit levels and do not implicate the fundamental underlying purpose of the workers' compensation statutes which structure the relationship between employers and employees. Romein,

436 Mich at 534. Under the Energy Reserves, test, 459 US at 411, it is appropriate to "consider whether the industry the complaining party has entered has been regulated in the past." It is beyond dispute that the area of workers' compensation is heavily regulated. The Michigan Supreme Court observed that the workers' compensation statutes regulate "a field of commerce that has been subject to a wide-ranging and comprehensive scheme of government regulation." Romein, 436 Mich at 535. Indeed, in Michigan, state statutes constitute the exclusive remedy. MCL 418.131; MSA 17.237(13). The Michigan Supreme Court correctly observed that Petitioners knew that their rights were subject to alteration and that they were on notice that the Michigan Legislature

might seek to prevent the coordination of benefits. Romein, 436 Mich at 535. It is disingenuous at best for Petitioners to assert in this Court that the 1987 statute upset employers' "settled expectations and justifiable reliance interests". As described in the Statement of Facts in this brief, and in the brief for Respondents Romein and Gonzalez, it would be more accurate to say that it was Petitioners' aggressive litigation tactics, culminating in the Michigan Supreme Court's 1985 decision in Franks, which upset the settled expectations and justifiable reliance interests of all of the entities which had been involved in the extensive negotiations which culminated in the package of bills enacted in 1980-1981.

2. The 1987 Amendments Have A Significant And Legitimate Public Purpose.

As described in Energy Reserves, 459 US 411-412, this requirement ensures that the state is exercising its police power for a legitimate public purpose rather than providing a benefit to special interests. The type of "special interest" is perhaps demonstrated in Allied Structural Steel Co v Spannaus, 438 US at 247-249, in which the court invalidated a Minnesota pension law which had "an extremely narrow focus." Indeed, the Minnesota statute may in fact have been directed at only one particular employer. See Allied Structural Steel Co, 438 US at 248, n. 20, and Energy Reserves, 459 US at 412, n. 13. The 1987 amendments to Michigan's workers' compensation statutes

were not aimed at any such narrow special interests. To the contrary, they had broad application to many thousands of employees whose workers' compensation benefits were unexpectedly reduced. As the Michigan Supreme Court noted below, Romein, 436 Mich at 535-536, the workers' compensation reform package of legislation in 1980-1981 provided that resources saved as a result of coordination of benefits were reallocated to increase benefit levels for injuries occurring after January 1, 1982. Another statute had provided state-funded supplements for workers injured in the years between 1965 and 1979. MCL 418.352; MSA 17.237(352). The unexpected 1985 decision in Franks upset the settled compromise which had resulted in the package of reform bills, since it had the effect of reducing the

workers' compensation benefits for some workers who had not received a corresponding increase in benefit levels. The Michigan Supreme Court therefore correctly concluded that there was a legitimate state interest in correcting this perceived inequity. 436 Mich at 515.

Despite the pejorative characterization of these injured workers and Petitioners' attempt to impute some improper motivation to them, it is clear that restoring the benefit levels of those workers to the pre-1982 "uncoordinated" amounts was simply a legitimate policy choice by the Michigan Legislature, a policy choice which had been in operation for many years before the 1981 legislative reforms. The unexpected 1985 Michigan Supreme Court decision in Franks

resulted, in effect, in a windfall to Petitioners since it permitted them to reduce workers' compensation benefits to some injured workers to levels far below those which both the employees and employers had initially expected. The 1987 amendments were a permissible exercise of the state's police power to eliminate such windfall gains for Petitioners and restore some workers, such as Respondents Romein and Gonzalez, to their earlier benefit levels.

3. The Means Used To Effectuate This Legitimate Public Purpose Are Reasonable.

In Energy Reserves, 459 US at 412-413, it was observed that in reviewing economic and social regulation courts properly defer to legislative judgment as to the necessity and reasonableness of a

particular measure. In the instant case the Michigan Supreme Court correctly concluded that the statute "imposes no more retroactive liability than is necessary to remedy an unexpected circumstance relating to the interpretation of a prior statute." Romein, 436 Mich at 536. Petitioners' arguments merely demonstrate disagreement with the determinations by the Michigan Legislature and Michigan Supreme Court. They have failed to demonstrate any basis for overcoming the deference which this Court must properly give to those judgments.

III

THE 1987 AMENDMENTS TO THE MICHIGAN WORKERS' COMPENSATION STATUTES DO NOT VIOLATE THE DUE PROCESS CLAUSE.

The standards to be used in evaluating a due process challenge to retroac-

tive legislation have been clearly enunciated in several decisions of this Court, particularly in Usery v Turner Elkhorn Mining Co, 428 US 1 (1976) (upholding amendments to the Federal Coal Mine Health and Safety Act which imposed retroactive liability upon mine operators to provide compensation for disability incurred by former employees whose employment had terminated before the date of enactment) and Pension Benefit Guaranty Corp v Gray & Co, 467 US 717 (1984) (rejecting a challenge to the Multiemployer Pension Plan Amendments Act which required employers withdrawing from pension plans to pay a fixed debt to the plans and whose liability provisions took effect approximately five months before the statute was enacted). In Usery, supra, 428 US at 15-17, the Court said:

It is by now well established that legislative Acts adjusting the burdens and benefits of economic life come to the Court with a presumption of constitutionality, and that the burden is on one complaining of a due process violation to establish that the legislature has acted in an arbitrary and irrational way. *** And this court long ago upheld against due process attack the competence of Congress to allocate the interlocking economic rights and duties of employers and employees upon workmen's compensation principles analogous to those enacted here, regardless of contravening arrangements between employer and employee. ***

*** But our cases are clear that legislation readjusting rights and burdens is not unlawful solely because it upsets otherwise settled expectations. *** This is true even though the effect of the legislation is to impose a new duty or liability based on past acts. ***

It does not follow, however, that what Congress can legislate prospectively it can legislate retrospectively.

The retrospective aspects of legislation, as well as the prospective aspects, must meet the test of due process, and the justifications for the latter may not suffice for the former.

In Pension Benefit Guaranty Corp, supra, 467 US at 728-730, the Court quoted with approval from Usery and went on to say:

> We further explained that the strong deference accorded legislation in the field of national economic policy is no less applicable when that legislation is applied retroactively. Provided that the retroactive application of a statute is supported by a legitimate legislative purpose furthered by rational means, judgments about the wisdom of such legislation remain within the exclusive province of the legislative and executive branches. ***
>
> To be sure, we went on to recognize that retroactive legislation does have to meet a burden not faced by legislation that has only future effects. *** But that burden is met simply by showing that the retroactive application of the legislation is itself justified by a rational legislative purpose.

Petitioners' attempt to distinguish Turner Elkhorn by asserting that the legislation in question there only "attached

prospective consequences to past events by requiring compensation for future periods of disability" is simply wrong. Petitioners' Brief, p 47. This Court recognized in Usery that the legislation "has some retroactive effect" since it "requires compensation for disabilities bred during employment terminated before the date of enactment." 428 US at 15-16.

In Usery, this Court upheld "the imposition of liability for the effects of disabilities bred in the past" because such liability "is justified as a rational measure to spread the costs of the employees' disabilities to those who have profited from the fruits of their labor--the operators and the coal consumers." Turner Elkhorn, 428 US at 18. That is precisely what the Michigan

Legislature has done in the instant case. The 1987 Michigan legislation restoring workers' compensation benefits is a rational measure to spread the costs of the employees' disabilities to those who have profited from the fruits of their labor--employers such as Petitioners General Motors and Ford.

Petitioners' reliance on Railroad Retirement Board v Alton R Co, 295 US 330 (1935), is misplaced. In Alton this Court invalidated provisions of the Railroad Retirement Act of 1934 which required employers to finance pensions for former railroad employees who had been fully compensated while working for the railroads. Even assuming that Alton retains vitality ("despite the changes in judicial review of economic legislation that

have occurred in the ensuing years", Pension Benefit Guaranty Corp, supra, 467 US at 733; Turner Elkhorn, 428 US at 19), it is clearly distinguishable. Just as this Court said that Alton did not control in the context of black lung benefit provisions in Usery, so, too, in the instant case, the Michigan workers' compensation benefits are not intended to meet an employee's "generalized need for funds", but instead are "to satisfy a specific need created by the dangerous conditions under which the former employee labored--to allocate to the [employer] an actual, measurable cost of his business." Turner Elkhorn, 428 US at 19.

The Michigan Supreme Court properly applied the standard of review enunciated

in Turner Elkhorn and Pension Benefit Guaranty Corp and concluded that the retroactive portions of the Michigan statute "are justified by a rational legislative purpose to protect the benefit levels of workers who did not receive the increases in the legislative reform packages of 1980 and 1981. Since they did not receive the increase, remedial measures were needed. These amendments served a rational legislative purpose to alleviate this hardship." Romein, 436 Mich at 528-529.

Respondent Michigan Attorney General submits that when the unique circumstances of the instant case are viewed within their proper perspective, it simply can not be concluded that in the 1987 legislation restoring prior workers' com-

pensation benefit levels to some injured workers, the Michigan Legislature acted in an arbitrary and irrational way.

CONCLUSION

The judgment of the Michigan Supreme Court should be affirmed.

Respectfully submitted,

FRANK J. KELLEY
Attorney General

Gay Secor Hardy
Solicitor General

Thomas L. Casey
Assistant Solicitor General
Counsel of Record
525 West Ottawa Street
P. O. Box 30212
Lansing, Michigan 48909
(517) 373-1124

Counsel for Respondent
Michigan Attorney General

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